

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7121

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-7121

B
P/S

MIRIAM WINTERS,

Plaintiff-Appellant,

-against-

ALAN D. MILLER, M.D., individually and as Commissioner of Mental Hygiene of the State of New York; ALEXANDER THOMAS, M.D., individually and as Director of the Psychiatric Division, Bellevue Hospital Center; FRANCIS J. O'NEILL, M.D., individually and as Director of Central Islip State Hospital; Doctors H. Blankfeld, Dusan Kosovic, Sandra Grant, Gerald Grant, Gerald Ollins, Christine Jordan, Thomas DaCorta and Catherine Dromgoole and other doctors on the staffs of Bellevue Hospital and Central Islip State Hospital whose names are unknown to plaintiff,



Defendants-Appellees.

APPENDIX

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Corporation Counsel of the
City of New York
Municipal Building
Attorney for Appellees
Thomas and Ollins

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MIRIAM WINTERS

X

vs.

ALAN D. MILLER et all [sic] X

ORDER OF DISMISSAL

X

X

X

X

X

X

X

X

X

X

X

X

69 C 783

The above captioned-matter [sic] having come before
the Court for trial on November 4, 1974 at 10:00 A.M. and
counsel for plaintiff having failed to appear,

IT IS ORDERED that the matter is DISMISSED.

Dated: Brooklyn, New York
November 4, 1974

/s/ Orrin G. Judd
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MIRIAM WINTERS,

Plaintiff,

-against-

ALAN D. MILLER, M.D., individually and
as Commissioner of Mental Hygiene of
the State of New York; ALEXANDER THOMAS,
M.D., individually and as Director of
the Psychiatric Division, Bellevue
Hospital Center; FRANCIS J. O'NEILL,
M.D., individually and as Director of
Central Islip State Hospital; Doctors
H. Blankfeld, Dusan Kosovic, Sandra
Grant, Gerald Grant, Gerald Ollins,
Christine Jordan, Thomas DaCorta and
Catherine Dromgoole and other doctors
on the staffs of Bellevue Hospital and
Central Islip State Hospital whose
names are unknown to plaintiff,

: CIVIL ACTION
: 69 C 783
: (O.G.J.)

: NOTICE OF MOTION
: TO RE-OPEN

Defendants.

S I R S :

PLEASE TAKE NOTICE that plaintiff will move this
Court before the Hon. Orrin G. Judd, in Courtroom 11, United
States Courthouse, Eastern District of New York, 225 Cadman
Plaza East, Brooklyn, New York, on the 13th day of December,
1974, at 10:00 o'clock in the forenoon of that day or as
soon thereafter as counsel can be heard, for an order pursuant
to Rule 60(b) of the Federal Rules of Civil Procedure,
granting plaintiff's within motion to re-open this action
and for such other and further relief as to this Court
may seem just and proper.

Dated: New York, New York
December 4, 1974

Orthodox Jews

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New York, New York

Attn: Stanley Kantor, Esq.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MIRIAM WINTERS,

Plaintiff,

-against-

ALAN D. MILLER, M.D., individually and as Commissioner of Mental Hygiene of the State of New York; ALEXANDER THOMAS, M.D., individually and as Director of the Psychiatric Division, Bellevue Hospital Center; FRANCIS J. O'NEILL, M.D., individually and as Director of Central Islip State Hospital; Doctors H. Blankfeld, Dusan Kosovic, Sandra Grant, Gerald Grant, Gerald Ollins, Christine Jordan, Thomas DaCorta and Catherine Dromgoole and other doctors on the staffs of Bellevue Hospital and Central Islip State Hospital whose names are unknown to plaintiff,

Defendants.

The plaintiff moves this Court pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for an order permitting this action to be re-opened.

The grounds for this motion are stated in the attached affidavit of Jonathan A. Weiss, Esq., the Memorandum of Law accompanying this motion and the pleadings and record in this case.

Jonathan A. Weiss

JONATHAN A. WEISS

PHILIP GASSEL

Legal Services for the Elderly Poor
2095 Broadway, Room 304
(212) 595-1340

DATED: New York, NY
Dec. 4, 1974

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MIRIAM WINTERS,

Plaintiff,

- against -

ALAN D. MILLER, M.D., individually and as Commissioner of Mental Hygiene of the State of New York; ALEXANDER THOMAS, M.D., individually and as Director of the Psychiatric Division, Bellevue Hospital Center; FRANCIS J. O'NEILL, M.D., individually and as Director of Central Islip State Hospital; Doctors H. Blankfeld, Dusan Kosovic, Sandra Grant, Gerald Grant, Gerald Ollins, Christine Jordan, Thomas DaCorta and Catherine Dromgoole and other doctors on the staffs of Bellevue Hospital and Central Islip State Hospital whose names are unknown to plaintiff,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JONATHAN A. WEISS, being duly sworn, deposes and says that

1. I am the attorney for the plaintiff, MIRIAM WINTERS.
2. On June 5, 1974, the above-captioned case came before Judge Orrin G. Judd for the first time; the occasion being a pre-trial conference. At that conference, my co-counsel, Bruce Ennis, and I asked if, instead of a deposition,

interrogatories could be served on Miss Winters since she is a recluse. Judge Judd ruled that it is essential that there be a transcript. The representative from the Attorney General's office, Joel Sachs and from the Corporation Counsel's office, George Weiler, both stated that it made no sense to go ahead with the depositions of their clients unless Miss Winters was first deposed. With the cooperation of everyone, we arranged for the deposition of Miriam Winters in her hotel room on Tuesday, September 24, 1974.

3. Miss Winters was deposed on September 24 and defendants O'Neill and Thomas and Miller were deposed on October 10, 21 and 24 respectively.

4. On October 23, 1974, we had not yet received a copy of plaintiff's deposition transcript. At that point, I called Judge Judd's chambers and spoke with the law clerk, who suggested that I call back in a week if I had not received the transcript and informed Stanley Kantor, who had replaced Joel Sachs as the representative of the Attorney General's office, that we needed to have the transcript. He has been most cooperative in the past and told me that he was doing his best.

5. On October 29, 1974, I called Judge Judd's law clerk and informed him that we still had not received the transcript and thought that this would make it very difficult to go forward with the trial scheduled for November 4.

I called the law clerk again on October 31, 1974 to inform him that we still had not received the transcript.

6. On November 1, 1974, I informed the law clerk again that we had received neither the Winters' transcript nor those of the defendants. I told him that the delay was apparently caused by an illness in the reporting service used by both sides. I received the impression that the law clerk for Judge Judd agreed that we would re-schedule the case for a date later than November 4 and that it was not necessary for any attorney to appear on November 4. I called Mr. Weiler and Mr. Kantor and so informed them. To the best of my knowledge, the deposition transcripts are still unavailable.

7. On the morning of November 4, 1974, neither Mr. Kantor nor I were present in front of Judge Judd and the case was dismissed. Mr. Weiler had apparently noticed in his copy of the Law Journal that the case was on the calendar. I did not get my Law Journal until 10:30 that morning.

8. I managed to get the case scheduled for argument that afternoon and presented these facts to Judge Judd in general outline. He refused to remove his dismissal but said that I could make this motion to re-open for which this affidavit is now entered in support.

Sworn to before me this
5 day of December, 1974.

Philip M. Gassel
NOTARY PUBLIC
PHILIP M. GASSEL
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-9823006
Qualified in New York County
Term Expires March 10, 1976

Jonathan A. Weiss
JONATHAN A. WEISS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MIRIAM WINTERS, :

Plaintiff, : Civil Action

-against- : 69 C 783

ALAN D. MILLER, M.D., et al., :

Defendants. :

Motion granted and case reinstated except as
against defendants Miller, Thomas, and Ollins.

SO ORDERED.

/s/ Orrin G. Judd

December 13, 1974

Filed
In Clerk's Office
U.S. District Court E.D. N.Y.
December 17, 1974

[Typed from Judge's
handwritten original
Order endorsed on
Motion papers]